

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Senate Bill 576

BY SENATORS GAUNCH, PALUMBO, FERNS,

TRUMP, AND PLYMALE

[Passed March 8, 2018; in effect 90 days from passage]

1 AN ACT to amend and reenact §29-12D-1a of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §59-1-11 and §59-1-28a of said code, all relating to Patient Injury
3 Compensation Fund; changing dates for collection of assessments to be deposited in
4 Patient Injury Compensation Fund; designating person responsible for paying assessment
5 in certain circumstances; conforming language establishing when certain assessment
6 must be paid with current law language describing when medical malpractice claim may
7 be asserted; providing for transfer of remaining funds; changing the amount of certain
8 circuit clerk filing fees; and correcting cross-references.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.

**§29-12D-1a. Additional funding for Patient Injury Compensation Fund; assessment on
licensed physicians; assessment on hospitals; assessment on certain awards.**

1 (a) *Annual assessment on licensed physicians.* —

2 (1) The Board of Medicine and the Board of Osteopathic Medicine shall collect a biennial
3 assessment in the amount of \$125 from every physician licensed by each board for the privilege
4 of practicing medicine in this state. The assessment is to be imposed and collected on forms
5 prescribed by each licensing board. The assessment shall be collected as part of licensure or
6 license renewal beginning July 1, 2016, for licenses issued or renewed through December 31,
7 2021: *Provided*, That the following physicians shall be exempt from the assessment:

8 (A) A resident physician who is a graduate of a medical school or college of osteopathic
9 medicine enrolled and who is participating in an accredited full-time program of post-graduate
10 medical education in this state;

11 (B) A physician who has presented suitable proof that he or she is on active duty in the
12 armed forces of the United States and who will not be reimbursed by the armed forces for the
13 assessment;

14 (C) A physician who practices solely under a special volunteer medical license authorized
15 by §30-3-10a or §30-14-12b of this code;

16 (D) A physician who holds an inactive license pursuant to §30-3-12(j) or §30-14-10 of this
17 code, or a physician who voluntarily surrenders his or her license: *Provided*, That a retired
18 osteopathic physician who submits to the Board of Osteopathic Medicine an affidavit asserting
19 that he or she receives no monetary remuneration for any medical services provided, executed
20 under the penalty of perjury and if executed outside the State of West Virginia, verified, may be
21 considered to be licensed on an inactive basis: *Provided, however*, That if a physician or
22 osteopathic physician elects to resume an active license to practice in the state and the physician
23 or osteopathic physician has not paid the assessments during his or her inactive status, then as
24 a condition of receiving an active status license, the physician or osteopathic physician shall pay
25 the assessment due in the year in which physicians or the osteopathic physician resumes an
26 active license; and

27 (E) A physician who practices less than 40 hours a year providing medical genetic services
28 to patients within this state.

29 (2) The entire proceeds of the annual assessment collected pursuant to §29-12D-1a(a) of
30 this code shall be dedicated to the Patient Injury Compensation Fund. The Board of Medicine and
31 the Board of Osteopathic Medicine shall promptly pay over to the Board of Risk and Insurance
32 Management all amounts collected pursuant to this subsection for deposit in the fund.

33 (3) Notwithstanding any provision of the code to the contrary, a physician required to pay
34 the annual assessment who fails to do so shall not be granted a license or renewal of an existing
35 license by the Board of Medicine or the Board of Osteopathic Medicine. Any license which expires
36 as a result of a failure to pay the required assessment shall not be reinstated or reactivated until
37 the assessment is paid in full.

38 (b) *Assessment on trauma centers.* —The Board of Risk and Insurance Management shall
39 levy an assessment of \$25 for each trauma patient treated at a health care facility designated by

40 the Office of Emergency Medical Services as a trauma center, as reported to the West Virginia
41 Trauma Registry, from January 1, 2016, through June 30, 2021. The assessment is due June 30
42 following each calendar year for which assessments are levied: *Provided*, That the assessment
43 for the period January 1, 2021, through June 30, 2021, shall be due by December 31, 2021.

44 (c) *Assessment on claims filed under the Medical Professional Liability Act.* — From July
45 1, 2016, through December 31, 2021, an assessment of one percent of the gross amount of any
46 settlement or judgment in a qualifying claim shall be levied.

47 (1) For purposes of this subsection, a qualifying claim is any claim for which a screening
48 certificate of merit is required, or for which a statement setting forth the basis of the alleged liability
49 of the health care provider is allowed in lieu of the screening certificate of merit, as defined in §55-
50 7B-6 of this code.

51 (2) For any assessment levied pursuant to this subsection for which a judgment is entered
52 by a court, the date of the entry of judgment shall be used to determine applicability of this
53 provision. The defendant or defendants shall remit the assessment to the clerk of the court in
54 which the qualified claim was filed. The clerk of the court shall then remit the assessment monthly
55 to the State Treasury to be deposited in the fund.

56 (3) For any assessment levied pursuant to this subsection on a settlement entered into by
57 the parties, the date on which the agreement is formalized in writing by the parties shall be used
58 to determine applicability of this provision. At the time that an action alleging a qualified claim is
59 dismissed by the parties, the assessment shall be remitted by the plaintiff or his or her counsel to
60 the clerk of the court, who shall then remit the assessment to the State Treasury to be deposited
61 in the fund. Collected assessments shall be remitted no less often than monthly. If a qualifying
62 claim is settled prior to the filing of an action, the claimant, or his or her counsel, shall remit the
63 payment to the Board of Risk and Insurance Management within 60 days of the date of the
64 settlement agreement to be paid into the fund.

65 (d) *Annual Report; transfer of fund balance.* — The requirements of this section shall
66 terminate on the dates set forth in this section or sooner if the liability of the Patient Injury
67 Compensation Fund has been paid or has been funded in its entirety. The Board of Risk and
68 Insurance Management shall submit a report to the Joint Committee of Government and Finance
69 each year beginning January 1, 2018, giving recommendations based on actuarial analysis of the
70 fund's liability. The recommendations shall include, but not be limited to, discontinuance of the
71 assessments provided for in this section, closure of the fund and transfer of the fund's liability.
72 Any funds remaining in the fund on June 30, 2022, and determined by the Board of Risk and
73 Insurance Management to not be necessary for claim payments or administrative costs of the
74 fund, shall be transferred to the General Revenue Fund.

**CHAPTER 59. FEES, ALLOWANCES, AND COSTS; NEWSPAPERS;
LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect for services rendered by the clerk
2 the following fees which shall be paid in advance by the parties for whom services are to be
3 rendered:

4 (1) Except as provided in §59-1-11(a)(2) and §59-1-11(a)(3) of this code, for instituting
5 any civil action under the Rules of Civil Procedure, any statutory summary proceeding, any
6 extraordinary remedy, the docketing of civil appeals or removals of civil cases from magistrate
7 court, or any other action, cause, suit or proceeding, \$200, of which \$30 shall be deposited in the
8 Courthouse Facilities Improvement Fund created by §29-26-6 of this code and \$45 shall be
9 deposited in the special revenue account designated the Fund for Civil Legal Services for Low
10 Income Persons, established by §59-1-10(c)(4)(B) of this code, and \$20 deposited in the special
11 revenue account created in §48-26-603 of this code to provide legal services for domestic
12 violence victims;

13 (2) For instituting an action for medical professional liability, \$400, of which \$10 shall be
14 deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code:
15 *Provided*, That after December 31, 2021, the filing fee for instituting an action for medical
16 professional liability shall be \$280, of which \$10 shall be deposited in the Courthouse Facilities
17 Improvement Fund created by §29-26-6 of this code;

18 (3) Beginning on and after July 1, 1999, for instituting an action for divorce, separate
19 maintenance, or annulment, \$135;

20 (4) For petitioning for the modification of an order involving child custody, child visitation,
21 child support, or spousal support, \$85;

22 (5) For petitioning for an expedited modification of a child support order, \$35;

23 (6) For filing any pleading that includes a counterclaim, cross claim, third-party complaint,
24 or motion to intervene, \$200, which shall be deposited in the special revenue account designated
25 the Fund for Civil Legal Services for Low Income Persons, established by §59-1-10(c)(4)(B) of
26 this code: *Provided*, That this subdivision and the fee it imposes does not apply in family court
27 cases nor may more than one such fee be imposed on any one party in any one civil action; and

28 (7) Except for civil actions within the jurisdiction of family courts, for each defendant or
29 respondent named in the initial pleading upon the institution of a civil action in which there are
30 two or more named defendants, and for each additional defendant, respondent, or third-party
31 defendant subsequently named in a pleading filed in the civil action, \$15, payable upon the
32 institution of the civil action or upon the filing of the initial pleading that names the additional
33 defendant, respondent, or third-party defendant, of which \$10 shall be deposited in the general
34 fund of the county in which the office of the circuit clerk is located, and \$5 shall be deposited in
35 the State Police Forensic Laboratory Fund, established under §15-2-24d of this code: *Provided*,
36 That for purposes of this subdivision, “defendant or respondent named” does not include those
37 defendants or respondents identified as “John/Jane Doe”.

38 (b) In addition to the foregoing fees, the following fees shall be charged and collected:

- 39 (1) For preparing an abstract of judgment, \$5;
- 40 (2) For a transcript, copy, or paper made by the clerk for use in any other court or otherwise
41 to go out of the office, for each page, \$1;
- 42 (3) For issuing a suggestion and serving notice to the debtor by certified mail, \$25;
- 43 (4) For issuing an execution, \$25;
- 44 (5) For issuing or renewing a suggestee execution and serving notice to the debtor by
45 certified mail, \$25;
- 46 (6) For vacation or modification of a suggestee execution, \$1;
- 47 (7) For docketing and issuing an execution on a transcript of judgment from magistrate
48 court, \$3;
- 49 (8) For arranging the papers in a certified question, writ of error, appeal, or removal to any
50 other court, \$10, of which \$5 shall be deposited in the Courthouse Facilities Improvement Fund
51 created by §29-26-6 of this code;
- 52 (9) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party
53 requesting the same, 50 cents;
- 54 (10) For additional service, plaintiff or appellant, where any case remains on the docket
55 longer than three years, for each additional year or part year, \$20; and
- 56 (11) For administering funds deposited into a federally insured interest-bearing account or
57 interest-bearing instrument pursuant to a court order, \$50, to be collected from the party making
58 the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.
- 59 (c) In addition to the foregoing fees, a fee for the actual amount of the postage and express
60 may be charged and collected for sending decrees, orders, or records that have not been ordered
61 by the court to be sent by mail or express.
- 62 (d) The clerk shall tax the following fees for services in a criminal case against a defendant
63 convicted in such court:
- 64 (1) In the case of a misdemeanor, \$85; and

65 (2) In the case of a felony, \$105, of which \$10 shall be deposited in the Courthouse
66 Facilities Improvement Fund created by §29-26-6 of this code.

67 (e) The clerk of a circuit court shall charge and collect a fee of \$25 per bond for services
68 rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of
69 issuance by the person or entity set forth below:

70 (1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

71 (2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of
72 the real estate serving as surety;

73 (3) For recognizance bonds secured by a surety company, the fee shall be paid by the
74 surety company;

75 (4) For 10 percent recognizance bonds with surety, the fee shall be paid by the person
76 serving as surety; and

77 (5) For 10 percent recognizance bonds without surety, the fee shall be paid by the person
78 tendering 10 percent of the bail amount.

79 In instances in which the total of the bond is posted by more than one bond instrument,
80 the above fee shall be collected at the time of issuance of each bond instrument processed by
81 the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse
82 Facilities Improvement Fund created by §29-26-6 of this code. Nothing in this subsection
83 authorizes the clerk to collect the above fee from any person for the processing of a personal
84 recognizance bond.

85 (f) The clerk of a circuit court shall charge and collect a fee of \$10 for services rendered
86 by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of
87 issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse
88 Facilities Improvement Fund created by §29-26-6 of this code.

89 (g) No clerk is required to handle or accept for disbursement any fees, costs, or amounts
90 of any other officer or party not payable into the county treasury except on written order of the
91 court or in compliance with the provisions of law governing such fees, costs, or accounts.

92 (h) Fees for removal of civil cases from magistrate court shall be collected by the
93 magistrate court when the case is still properly before the magistrate court. The magistrate court
94 clerk shall forward the fees collected to the circuit court clerk.

§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.

1 (a) Except for those payments to be made from amounts equaling filing fees received for
2 the institution of divorce actions as prescribed in §59-1-28a(b) of this code, and except for those
3 payments to be made from amounts equaling filing fees received for the institution of actions for
4 divorce, separate maintenance, and annulment as prescribed in §59-1-28a(b) of this code, for
5 each civil action instituted under the rules of civil procedure, any statutory summary proceeding,
6 any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit, or
7 proceeding in the circuit court the clerk of the court shall, at the end of each month, pay into the
8 funds or accounts described in this subsection an amount equal to the amount set forth in this
9 subsection of every filing fee received for instituting the action as follows:

10 (1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury
11 established pursuant to the provisions of §31-20-10 of this code the amount of \$60;

12 (2) Into the Court Security Fund in the State Treasury established pursuant to the
13 provisions of §51-3-14 of this code the amount of \$5; and

14 (3) Into the Regional Jail Operations Partial Reimbursement Fund established pursuant to
15 the provisions of §31-20-10b of this code the amount of \$20.

16 (b) For each action for divorce, separate maintenance, or annulment instituted in the circuit
17 court, the clerk of the court shall, at the end of each month, report to the Supreme Court of Appeals
18 the number of actions filed by persons unable to pay and pay into the funds or accounts in this
19 subsection an amount equal to the amount set forth in this subsection of every filing fee received
20 for instituting the divorce action as follows:

21 (1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury
22 established pursuant to the provisions of §31-20-10 of this code the amount of \$10;

23 (2) Into the special revenue account of the State Treasury established pursuant to §48-2-
24 604 of this code an amount of \$30;

25 (3) Into the Family Court Fund established under §51-2A-22 of this code an amount of
26 \$70; and

27 (4) Into the Court Security Fund in the State Treasury established pursuant to the
28 provisions of §51-3-14 of this code the amount of \$5.

29 (c) Notwithstanding any provision of §59-1-28a(a) or §59-1-28a(b) of this code to the
30 contrary, the clerk of the court shall, at the end of each month, pay into the Family Court Fund
31 established under §51-2A-22 of this code an amount equal to the amount of every fee received
32 for petitioning for the modification of an order involving child custody, child visitation, child support,
33 or spousal support as determined by §59-1-11(a)(4) of this code and for petitioning for an
34 expedited modification of a child support order as provided in §59-1-11(a)(5) of this code.

35 (d) The clerk of the court from which a protective order is issued shall, at the end of each
36 month, pay into the Family Court Fund established under §51-2A-22 of this code an amount equal
37 to every fee received pursuant to the provisions of §48-27-508 of this code.

38 (e) Of every fee for service received in any criminal case against any respondent convicted
39 in circuit court, the clerk of each circuit court shall, at the end of each month, pay into the Regional
40 Jail and Correctional Facility Authority Fund in the State Treasury an amount equal to \$40, into
41 the Court Security Fund in the State Treasury established pursuant to the provisions of §51-3-14
42 of this code an amount equal to \$5, and into the Regional Jail Operations Partial Reimbursement
43 Fund established pursuant to the provisions of §31-20-10b of this code an amount equal to \$30.

44 (f) The clerk of the circuit court shall, at the end of each month, pay into the Patient Injury
45 Compensation Fund established under §29-12D-1 *et seq.* of this code, an amount equal to \$285
46 of every filing fee received for instituting a medical professional liability action: *Provided*, That the
47 payments into the Patient Injury Compensation Fund required by this subsection shall cease
48 following payment by the clerk based on filing fees received through December 31, 2021.

49 (g) The clerk of the circuit court shall, at the end of each month, pay into the Courthouse
50 Facilities Improvement Fund created by §29-26-6 of this code those amounts received by the
51 clerk which are dedicated for deposit in the fund.

52 (h) The clerk of each circuit court shall, at the end of each month, pay into the Regional
53 Jail Operations Partial Reimbursement Fund established in the State Treasury pursuant to the
54 provisions of §31-20-10b of this code those amounts received by the clerk which are dedicated
55 for deposit in the fund.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2018.

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Governor